



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 29] CHANDIGARH, WEDNESDAY, MARCH 16, 2022 (PHALGUNA 25, 1943 SAKA)

CHANDIGARH ADMINISTRATION
EXCISE AND TAXATION DEPARTMENT

Notification

The 15th March, 2022

No. 2498.—In exercise of the powers conferred by Section 4 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005) as extended to the Union Territory of Chandigarh and all other powers enabling him in this behalf and in pursuance to the concurrence given by the Hon'ble Chief Justice, Punjab & Haryana High Court, as conveyed *vide* letter No. 113 spl./5 Exc. Cell dt. 04.02.2022, the Administrator, Union Territory, Chandigarh, is pleased to appoint Sh. Dharam Pal, IAS Adviser to the Administrator, Union Territory, Chandigarh as Chairman of the Chandigarh Value Added Tax Tribunal to hear and decide the appeals pertaining to the VAT cases of pre-GST regime in whole of the Union Territory of Chandigarh.

Administrator,
Union Territory, Chandigarh.

Signature Not Verified
Digitally signed by
Jalinder Kumar
Date: 2022.03.16
15:43:20 IST
Reason: Published
Location:

(249)

This is Digitally Signed Gazette. To verify, visit :
<https://egazette.chd.gov.in>

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 24th February, 2022

No. 13/1/9838-HII(2)-2022/2720.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 56/2018, dated 06.01.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DEVINDER SINGH RAWAT S/O SHRI KUNDAN SINGH RAWAT, TBM, M/S ABBOTT HEALTH CARE PRIVATE LIMITED, PLOT NO. 62, INDUSTRIAL AREA, PHASE II, CHANDIGARH (SINCE DISMISSED), R/O HOUSE NO. 2104/3, SECTOR 45-C, CHANDIGARH. (Workman)

AND

1. ABBOTT HEALTH CARE PRIVATE LIMITED THROUGH MANAGING DIRECTOR, 4 CORPORATE PARK, SION TROMBAY ROAD, MUMBAI - 400071.
2. ZONAL BUSINESS MANAGER, ABBOTT HEALTH CARE PRIVATE LIMITED, ZONAL OFFICE - DELHI, 217B, 3RD FLOOR, OKHLA INDUSTRIAL ESTATE, PHASE III, NEW DELHI - 110020.
3. ABBOTT HEALTH CARE (P) LIMITED, 62, INDUSTRIAL AREA, PHASE II, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that he was employed in S.G. Pharmaceuticals as Professional Service Representative *vide* appointment order dated 03.01.1995, which was later on transferred to Piramal Health Care Limited on 04.03.2003 and thereafter the PHL Health Care Solution Business was transferred to Abbott Health Care Private Limited and the workman was transferred from PHL to Abbott Health Care Private Limited *vide* order dated 09.08.2010 without any interruption in service. Thereafter Abbott Health Care Private Limited issued offer letter on 9th August, 2010 issued by the authorised signatory of HR Department being the appointing authority, which it is mentioned that prior service with PHL shall be taken into account for

statutory purpose and entire service was continuous right from the date of initial appointment i.e. 27.12.1994. The workman was working as TBM with Head Quarter at Chandigarh comprising the area of Chandigarh and additionally he was given the area of Himachal Pradesh. He was working as Sales Promotion Employee as such falls within the definition of 'workman' under the Sales Promotion Employees (Condition of Service) Act, 1976. The situs of employment of the workman is Chandigarh. Whole cause of action arose under the territorial jurisdiction of this authority and this authority has clear territorial jurisdiction to entertain and adjudicate the matter under dispute.

Though the workman had been performing his duties faithfully, sincerely and with utmost devotion yet he was chargesheeted on 17.02.2017 on the alleged ground of submission of wrong online daily report with regarding to meeting with two Doctors namely Dr. Sharad Prabhakar and Dr. Vishal Kumar of PGIMER, Chandigarh on 27.08.2016 whereas they were out of Chandigarh from 25.08.2016 to 29.08.2016. The workman submitted his defense reply on 02.03.2017 stating that the reports have been manipulated as the entire reporting online system is controlled by the company and he has been victimized due to filing of complaint against the management for unfair trade and labour practice and denied the allegations. Without considering the reply *vide* letter dated 30.03.2017 Shri A. K. Bakshi, an Advocate was appointed as Inquiry Officer.

During the course of proceedings the workman sought the assistance of an Advocate *vide* representation dated 03.05.2017. The Inquiry Officer rejected the just & genuine prayer *vide* order dated 01.06.2017. The Inquiry Officer fixed the inquiry proceedings on various dates from time to time but on 03.07.2017 when the workman sought an adjournment on the ground of ailment yet in the absence of the workman written statement of management witness Shri Sorav Chhibbar was taken on record. The workman submitted another application on 20.07.2017 seeking the assistance of an Advocate as the judgment referred by the management's representative was not applicable but was rejected on the ground that the workman is not working in an industrial establishment and not governed by the Standing Orders Act. The workman had asked for supply of the copy of standing orders governing the service of the workman and copy of transfer policy *vide* representation dated 20.07.2017 but in the proceedings dated 03.08.2017 the management had not introduced any standing orders in respect of filed employees being not covered under the IESO Act, 1946. On 29.09.2017 the Inquiry Officer proceeded *ex parte* against the workman and submitted the *ex parte* inquiry report dated 28.10.2017 and proved the charges levelled in the chargesheet dated 17.02.2017.

Vide letter dated 20.11.2017, the management supplied a copy of inquiry report and asked the workman to submit his representation within three days of receipt. The workman applied for extension and thereafter submitted my detailed reply and prayed for giving opportunity of personal hearing to explain his position and submitted that in case he was given the assistance of an Advocate in view of settled position of law, he is still ready and willing to participate in the inquiry proceedings from the stage of *ex parte*.

Without affording an opportunity of personal hearing and granting the assistance of an Advocate, the management imposed the extreme penalty of dismissal and passed order dated 27.12.2017. Dismissal order was passed by the Zonal Business Manager, who is neither the appointing authority nor the disciplinary authority. Neither the factual nor the legal pleas have been taken into consideration and order has been passed without any just, proper and judicious application of mind. In the order of punishment, the management had considered the past record without putting him on notice of the same. The workman was victimized because of his trade union activities as he was an active worker of the union and the Union known as Bhartiya Kamgarh Karamchari Mahasangh. While imposing the punishment of dismissal the management has not taken the permission of the Industrial Tribunal as provided under Section 33(2)(b) of the ID Act. Ultimately, it is prayed that the order of dismissal dated 27.12.2017 be set aside and the workman be reinstated with continuity of service and all consequential benefits including arrears of salary etc.

3. Management No. 1 to 3 contested the case of the workman and filed written statement raising preliminary objection that Shri Devinder Singh Rawat (hereinafter called 'claimant') does not fall within the definition of 'workman' under Section 2(s) of the ID Act as he was employed with the management as Territory Business Manager and his services were mainly supervisory nature. This Court has no territorial jurisdiction as no cause of action has arisen within the territorial jurisdiction. He was appointed from New Delhi office and his termination was also issued at New Delhi. There is no office of the company at Chandigarh. On merits, it is pleaded that on the basis of written test and subsequent interview by Nicholas Piramal India Limited (Later known as Piramal Healthcare Limited) he was selected and employed as Territory Business Manager with effect from 01.04.2006 in the management cadre. Subsequently his services were transferred with effect from 08.09.2010 from Piramal Healthcare Limited to Abbott Healthcare Private Limited on the same terms & conditions of appointment as were applicable to him as Territory Business Manager in Piramal Healthcare Limited. The claimant is neither a 'workman' under the provisions of the ID Act nor a sales promotion employee under Sales Promotion Employee (Conditions of Service) Act, 1976 so he is entitled to invoke the jurisdiction of this Court. The present reference is without territorial jurisdiction.

The management has given full opportunity to the claimant to prove his innocence by way of conducting a fair & proper inquiry. The inquiry that commenced on 12.04.2017 continued on 03.05.2017, 01.06.2017, 03.07.2017, 20.07.2017, 03.08.2017, 17.08.2017, 13.09.2017, 29.09.2017 & 16.10.2017. Initially the claimant attended the inquiry and from 13.09.2017 onwards without any valid reason or justification and despite having due notice of the date and proceedings he stopped attending the inquiry so the Inquiry Officer was left with no other alternative but to proceed and conclude the inquiry in absence of the workman.

There were complaints about the work and conduct of the claimant and he indulged into serious misconduct of false reporting for which he was issued charge sheet. The claimant tried to escape from the allegations by raising false pleas that the reports have been manipulated. The web based system in which the claimant was filling reports is highly secured and audited system. Employees like the claimant are provided with auto generated login details, which they receive on their respective official email ids directly from the service provider i.e. Salesforce.com. No one including the user can edit / make any change in the report once the report gets submitted.

The reply of the claimant to the chargesheet was duly considered before taking a decision to institute an inquiry. The Inquiry Officer took a thoughtful and considered decision not to allow representation through an Advocate since neither the management was represented by an Advocate nor the charges were so complex that his co-employee would not have been able to rebut the charges. The law and past practices in the company does not permit representation by an Advocate in a domestic inquiry. The claimant was allowed to be defended by any co-employee, as his co-employee would have been fully aware of the working of system, rules & regulation and policies of the company and would have rendered him quick and satisfactory service. No adverse proceedings were held by the Inquiry Officer against the claimant on 03.07.2017 and the copy of statement of management witness taken on record was supplied / sent to the claimant along with copy of inquiry proceedings by registered post by the Inquiry Officer. The claimant was adamant to bring an Advocate in the inquiry despite speaking orders passed by the Inquiry Officer on his earlier request. The second representation was disposed off accordingly by the Inquiry Officer.

The claimant filed representation to the report of the Inquiry Officer which was duly considered by the disciplinary authority and thereafter the dismissal orders were passed by the Zonal Business Manager, who is competent to pass such orders on behalf of the company. The claimant was appointed as Territory Business Manager by Zonal Business Manager based at New Delhi. He was dismissed on the basis of proved charges of misconduct and there is no iota of victimization. The management was not aware of any trade union activities of the claimant. Other averments of the case of the claimant were denied and ultimately, it is prayed that the claim of the claimant be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed:-

1. Whether Shri Devinder Singh Rawat is not a 'workman' as defined under the ID Act ? OPM
2. Whether this court has no territorial jurisdiction to entertain & adjudicate the present claim ? OPM
3. Whether the services of Shri Devinder Singh Rawat were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
4. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri A. K. Bakshi - Inquiry Officer as MW1 and Shri Surinder Sharma - Zonal Business Manager as MW2. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1 :

7. Onus to prove this issue was on the management but the management did not produce any evidence on this issue and learned representative for the management has simply argued that the claimant does not come under the definition of 'workman'. On the other hand, the workman while stepping into the witness box deposed that he is working as Sales Promotion Employee and falls within the definition of 'workman' under the Sales Promotion Employees (Conditions of Service) Act, 1976.

8. The management's the evidence produced by the management MW2 Surinder Sharma himself stated in his cross-examination that no employee was working under Shri Devinder Singh Rawat and he has no power to recommend any disciplinary proceedings against any employee nor he was entitled to sanction any leave as no person was working under him. The duties and functions assigned to Shri Devinder Singh Rawat was mentioned in the appointment letter. Moreover, the definition of the 'workman' under the ID Act reads as under :—

"2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical operational, clerical thousand rupees] per mensem or exercises, either by or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.] ."*

So Shri Devinder Singh Rawat falls under the definition of 'workman' as defined under Section 2(s) of the ID Act and mere designation of an employee is not enough to hold an employee to be the holder of the post and to bring him out of definition of 'workman'. Hence, the sales promotion employee falls within the definition of 'workman'. Reliance is placed by learned representative for the workman on citations **Rhone-Poulence (India) Limited Versus State of U. P., 2000(4) RSJ 333; SPIC Pharmaceuticals Division Versus Authority under Section 48(1) of A. P. & Another, 2007(3) RSJ 250 SC; Ripu Daman Bhanot Versus The Presiding Officer, Labour Court Ludhiana & Others, 1996(5) SLR 44 (P&H)(DB); Rajasthan Medical & Sales Representative Union & Others Versus Industrial Research Institute Private Limited & Others, 2000(4) RSJ 797 (Raj) (DB) and The Management of Godrej Consumer Products Limited & Others Versus The State of Assam & Others, 2020(4) SCT 77 (Gauhati).**

9. In the light of discussion made above and citations referred by the learned representative for the workman, it is held that Shri Devinder Singh Rawat falls under the definition of 'workman' as defined under Section 2(s) of the ID Act. Accordingly, this issue is decided against the management and in favour of the workman.

Issue No. 2 :

10. Onus to prove this issue was on the management but the management has not led any evidence on this issue and learned representative for the management simply argued that this court has no territorial jurisdiction as no cause of action has arisen within the territorial jurisdiction of this Court and the claimant was appointed from New Delhi Office and his termination order was also issued at New Delhi. On the other hand, learned representative for the workman has argued that the situs of the employment of the workman is at Chandigarh and he continuously worked at Chandigarh Head Quarter and at the time of dispute he was working at Chandigarh. All unfair labour practice are applied on the workman while working at Chandigarh. Whole cause of action arose in territorial jurisdiction of Chandigarh.

11. In this regard perusal of the charge sheet dated 17.02.2017 Exhibit 'AW1/3' reveals that it clearly mentioned in paragraph No.1 that "You have been employed as a Territory Business Manager and currently posted at Chandigarh" and charge sheet is addressed to the workman "Mr. Devinder Singh Rawat, ECD 106888, Head Quarter Chandigarh". Hence, the situs of the employment of the workman is at Chandigarh and this Court has jurisdiction to entertain the present industrial dispute raised by the workman. Accordingly, this issue is decided against the management and in favour of the workman.

Issue No. 3 :

12. Onus to prove this issue was on the workman and to discharge the same he stepped into the witness box and deposed that he was employed in S.G. Pharmaceuticals as Professional Service Representative *vide* appointment letter dated 03.01.1995, which was later on transferred to Piramal Health Care Limited and thereafter the PHL Health Care Solution Business was transferred to Abbott Health Care Private Limited and the workman was transferred from PHL to Abbott Healthcare Private Limited *vide* order dated 09.08.2010 without any interruption in service. Copy of the order is dated 09.08.2010 Exhibit 'WW1/1'. Thereafter the management Abbott Healthcare Private Limited issued offer letter on 9th August, 2010 by authorised signatory HR Department being the appointing authority, copy of the order is Exhibit 'WW1/2'. He further deposed that he was charge sheeted on 17.02.2017 and the said charge sheet was replied on 02.03.2017, which was found to be unsatisfactory and Shri A. K. Bakshi - Advocate was appointed as Inquiry Officer. Copy of charge sheet, reply of the workman and order of appointment of the Inquiry Officer are Exhibit 'WW1/3' & 'WW1/5'. During the course of proceedings he sought the assistance of an Advocate *vide* representation dated 03.05.2017, copy of the same is Exhibit 'WW1/6', but the Inquiry Officer rejected the just & genuine prayer *vide* order dated 01.06.2017, copy of the said order dated 01.06.2017 as Exhibit 'WW1/7'. On 03.07.2017 he sought an adjournment on the ground of ailment yet in his absence the written statement of management's witness

Shri Sorav Chhibbar was taken on record. Copy of proceedings dated 03.07.2017 along with statement of management's witness is Exhibit 'WW1/8'. He further deposed that he submitted another application on 20.07.2017 seeking the assistance of an Advocate but the same was also rejected on the same. Copy of proceedings dated 20.07.2017 is Exhibit 'WW1/9'. He also asked for supply of copy of standing orders governing his services and copy of transfer policy *vide* representation dated 20.07.2017 but in proceedings dated 03.08.2017 it was observed that the management has not introduced any standing orders in respect of field employees being not covered under the IESO Act, 1946. On 29.09.2017 the Inquiry Officer proceeded *ex parte* against him. Copy of said order is Exhibit 'WW1/10'. The Inquiry Officer submitted the *ex parte* inquiry report dated 28.10.2017 and proved the charges levelled in the chargesheet dated 17.02.2017 and *vide* letter dated 20.11.2017 the management supplied a copy of the inquiry report and asked to submit his representation within three days of receipt of the same. Copy of letter dated 20.11.2017 and inquiry report dated 28.10.2017 Exhibit 'WW1/11'. He also deposed that he applied for extension and submitted detailed reply on 02.12.2017. Copy of the same is Exhibit 'WW1/12'. Without affording an opportunity of personal hearing and granting the assistance of an Advocate, the management imposed the extreme penalty of dismissal and passed the orders dated 27.12.2017. A copy of the said order dated 27.12.2017 is Exhibit 'WW1/13'. He further deposed that the dismissal has been passed by the Zonal Business Manager, who is neither the appointing authority nor the disciplinary authority so order of dismissal dated 27.12.2017 is without jurisdiction. In order of punishment the management has considered the past record without putting him on notice of the same. The punishment of dismissal is highly excessive and shockingly disproportionate to the alleged misconduct and the management had not taken into consideration more than 23 years unblemished record of service. He has been victimized due to his trade union activities as he was an active worker of the union and known as Bhartiya Kamgarh Karamchhari Mahasangh has already filed a complaint against the management under Section 25-T, 25-U and 33 of the ID Act regarding adoption of unfair practice of the management on 30.10.2014. Copy of complaint is Exhibit 'WW1/14'.

13. Learned representative for the workman has argued that the services of the workman were terminated illegally *vide* order dated 27.12.2017 and dismissal order dated 27.12.2017 Exhibit 'AW1/13' is vague, non speaking, cryptic and suffers from perversity as after receipt of the copy of the inquiry report dated 28.10.2017 *vide* letter dated 20.11.2017 Exhibit 'AW1/11', the workman submitted a detailed comments on the inquiry report in which the workman raised factual as well as legal pleas including causing of serious prejudice during the course of inquiry when the application submitted by the workman for assistance of an advocate was rejected by the Inquiry Officer, who himself was a practicing lawyer. He placed reliance on citation **Prof. Ramesh Chander Versus University of Delhi & others, 2015(2) SCT 341 SC.** He further argued that the inquiry report is doctored and manipulated. The management has been adopting unfair labour practices and a complaint was filed and the management has been adopting unfair labour practices and a complaint was filed and the management was vindictive towards the workman. The online reporting system is controlled by the company and the changes are very much possible. Shri Saurav Chhibbar and Shri Ritesh Sheti ABN and Manager, Sales Force Automation did not record their evidence before the Inquiry Officer rather submitted a prepared text so their statements could not have been read in to and evidence but none of the plea raised by the workman finds consideration in the impugned order of dismissal and application of mind and the order has been passed on irrelevant grounds, ignoring the relevant one and as such not only vague, non speaking, cryptic but also suffers from perversity. He argued that it is settled position in law that not only the judicial and quasi judicial but even the administrative authorities are required to pass a well speaking and reasoned order to enable the adversely effected person to submit an effective challenge to the order either before the appellate authority or before the competent court of law. The reasons are live links between the decision and the decision maker and in the absence of reasons the order become lifeless. The order must reflect as to what weighed the mind of the authority in support of his conclusions and how the pleas raised have been considered

and rejected and by what reasoning. He placed reliance on citations **M/s Kranti Associates Private Limited & Another Versus Shri Masood Ahmed Khan & Others, 2010(4) RCR (Civil) 600 (SC); The State of Punjab Versus Bakhtawar Singh & Others, 1972 SLR 85 (SC); S. N. Mukherjee Versus Union of India, 1990(5) LSR 8 SC (Constitution Bench); MMRDA Officers Association Versus Mumbai Metropolitan Regional Development Authority & Another, 2005(2) RSJ 362 SC; Union of India Versus E.G. Namburdiri, 1991(2) SLR 675 SC; State of Uttranchal Versus Sunil Kumar Singh Negi, 2008(2) SCT 429; Dhani Ram Chaudhary Versus State of Haryana, 1998(3) RSJ 609 DB; Balbir Singh Dharni Versus Union of India & Others, 2002(2) RSJ 197 (P&H)(DB); Puran Singh Versus M/s Raghbeer Machinery Private Limited, 2007(2) RSJ 572 (P&H)(DB) and The Punjab Financial Corporation Employees Welfare Association, Chandigarh Versus Punjab Financial Corporation, 2004(1) RSJ 499.**

14. Learned representative for the workman has argued that the workman had sought the opportunity of personal hearing to explain his position but no reason has been assigned as to why no personal hearing was given. Further the workman submitted in reply that in case of assistance of Advocate is given in view of the settled proposition of law the workman is still ready and willing to participate in the inquiry proceedings from the stage of *ex parte*. But the management did not accede the demands of the workman. So there is denial of assistance of the Advocate. In support of his pleadings learned representative for the workman placed reliance on citations **C. L. Subramaniam Versus Collector of Customs, 1973(2) SLR 415 S.C.; J. K. Aggarwal Versus Haryana Seeds Development Corporation Limited, 1991(5) SLR 78 SC and Board of Trustees of the Port of Bombay Versus Dilip Kumar Raghvendra Nath Nadkarni & Others, 1983(1) SLR 464 SC.**

15. Further it is argued that the workman was chargesheeted on the ground of alleged false reporting about the meeting Dr. Sharad Prabhakar, Orthopedician and Dr. Vishal Kumar, Orthopedician and detailed them some medicine and the inquiry report was submitted by the Inquiry Officer *ex parte*. He referred to cross-examination of MW2 and also argued that there was no prior permission of the Government under the ID Act so it vitiates the order of punishment. He also placed reliance on citations **Jaipur Zila Sahakari Bhoomi Vikas Bank Limited Versus Ram Gopal Sharma & Others, 2002 SCC (L&S) 279 Constitution Bench and ONGC Limited Versus Petroleum Coal Labour Union, 2015(3) SCT 88.**

16. Further the management has taken into consideration past record, which is not in the charge sheet and no opportunity of hearing has been given to the delinquent official. He placed reliance on **The State of Mysore Versus K. Mache Gowda, AIR 1964 SC 506 and Mohd. Yunus Khan Versus State of U.T., 2010(4) SCT 600.** Imposition of punishment of extreme penalty of dismissal as compared to the alleged misconduct is wholly shocking and disproportionate and highly excessive & irrational. He placed reliance on citations **Smt. Kailash Sharma Versus State of Punjab, 2004(1) SCT 798; M. C. Ludhiana Versus Surinder Kumar, 2000(3) RSJ 624; Dev Singh Versus Punjab Tourism Development Corporation Limited & Another, 2003 SCC (L&S) 1198; Bhagat Ram Versus State of Himachal Pradesh, 1993 AIR SC 454; Ranjit Thakur Versus Union of India, 1988(1) SLR 61 SC and B. C. Chaturvedi Versus Union of India & Others, 1995(5) SLR 778.**

17. Learned representative for the workman has further argued that the inquiry report is on the basis of *ex parte* evidence and no opportunity of cross-examination was granted. In the absence of assistance of an Advocate the workman was not in a position to cross-examine the witnesses. Even after the closing the *ex parte* evidence the Inquiry Officer did not call the workman in order to give any opportunity to cross-examine the witnesses so inquiry report is vitiated. The Inquiry Officer has not conducted the inquiry in a proper manner. He referred to the cross-examination of Shri A. K. Bakshi, Inquiry Officer. He placed reliance on citation **Shri Rattan Lal Sharma Versus Managing Committee, Dr. Hari Ram (Co-Education), 1993(3) RSJ 673; Workman of Bharat Fritz Burner (P) Limited Versus Bharat Fritz Burner**

(P) Limited & Another, 1990(2) SLR 20 SC; Jaswant Singh Versus Pepsu Roadways Transport Corporation & Others, 1983(3) SLR 472 SC; Ramakant Misra Versus The State of UP & Others, 1983(1) SLR 135 SC; Scooter India Limited Versus Labour Court, Lucknow, 1989 SCC (L&S) 180 SC; Gajraj Versus JMP Industries & Others, 1996(7) SLR 790 (P&H)(DB); Geeta Ram Garg Versus Presiding Officer, 1998(2) RSJ 526 (P&H)(DB); Mangat Rai Versus PRTC, 1998(2) RSJ 125 (P&H)(DB) and Ram Singh Versus State of Punjab, 1998(2) RSJ 518 (P&H)(DB).

18. It is further argued that the management served the charge sheet dated 17.02.2017 which does not contain any list of witnesses and list of documents. He placed reliance on citation **Tilak Chand Magatram Obhan Versus Kamala Prasad Shukla & Others, 1995(5) SLR 809 (SC)**. In reply to the charge sheet the workman denied the allegations and no technical expert has been produced in the evidence to say on line reporting cannot be hacked. He prayed for deciding this issue in favour of the workman and against the management.

19. On the other hand, learned representative for the management has examined Shri A. K. Bakshi - Inquiry Officer as MW1, who tendered into evidence inquiry file Exhibit 'MW1/A'. The management further examined Shri Surender Sharma as MW2, who deposed that he is working with the company from 27th December 1994 and is conversant with the facts of the present case and the claimant was reporting to him in performance of his duties of Territory Business Manager. The claimant was issued charge sheet dated 17.02.2017, to which he filed and the same was considered and found to be unsatisfactory. Thereafter an inquiry was ordered and Shri A. K. Bakshi was appointed as Inquiry Officer *vide* letter dated 30.05.2017. The Inquiry Officer conducted the inquiry and submitted his report on 28.10.2017. Upon receipt of the report of the Inquiry Officer, he sent copy of inquiry report to the claimant on 20.11.2017. The claimant submitted his comments to the report of Inquiry Officer *vide* his letter dated 02.12.2017. He further deposed that he considered the entire inquiry file and comments filed by the claimant and after careful consideration of the same, he was convinced that the claimant was afforded full opportunity of defence in the inquiry and charges proved against the claimant were grave in nature so he passed termination order of the claimant.

20. Learned representative for the management has argued that the claimant was issued charge sheet, reply to the charge sheet which was considered and found unsatisfactory and the Inquiry Officer was appointed, who conducted the inquiry in a fair & proper manner and proved the charges levelled against the claimant. Thereafter the copy of inquiry report was sent to the claimant and after considering the same the workman was dismissed from service. He has placed reliance on **Punjab Agro Industries Versus Niram Singh & Another, CWP No.10020 of 2019 (O&M) decided on 28.05.2019 by Hon'ble Punjab & Haryana High Court; Kurukshetra University Versus Prithvi Singh, Civil Appeal No.3585 of 2008 decided on 15.02.2018 by Hon'ble Supreme Court of India; Karnataka State Road Transport Versus Lakshmiddevamma & Another, Civil Appeal No.2738 of 2001 decided Hon'ble Supreme Court of India; Crescent Dyes & Chemicals Limited Versus Ram Naresh Tripathi, Civil Appeal No. 5358 of 1992 decided on 16.12.1992 and Abdul Kahar Versus Labour Court, Bhilwara & Another, D.B. Civil Special Appeal No.529 of 2012 decided on 18.07.2012 by Hon'ble Rajasthan High Court, Jodhpur.**

21. After giving my careful consideration to the rival contentions of the parties, I find that admittedly the workman was employed with management as Territorial Business Manager in the management and his appointment letter is Exhibit 'M1'. Admittedly, the documentary evidence is proved by the workman is transfer order from PHL to Abbot Health Care Private Limited dated 09.08.2010 Exhibit 'AW1/1, Appointment order by Abbot dated 09.08.2010 Exhibit 'AW1/2, Charge sheet dated 17.02.2017 Exhibit 'AW1/3, reply dated 02.03.2017 and e-mail letter dated 28.11.2012 Exhibit 'AW1/4, order appointing the inquiry officer dated 30.03.2017 Exhibit 'AW1/5', representation for seeking assistance of an Advocate dated 03.05.2017 Exhibit 'AW1/6', order of rejection of the representation for assistance of an Advocate dated 01.06.2017 Exhibit 'AW1/7', proceedings

dated 03.07.2017 along with the statement of management witness Shri Saurav Chibbar Exhibit 'AW1/8', proceedings dated 20.07.2017 along with the representation of the workman for supplying the certified copy of the standing orders, transfer policy and for allowing the assistance of an advocate dated 20.07.2017 Exhibit 'AW1/9', order proceeding *ex parte* dated 29.09.2017 Exhibit 'AW1/10', Letter dated 20.11.2017 supplying the inquiry report dated 28.10.2017 Exhibit 'AW1/11', reply/comments on the inquiry dated 02.12.2017 Exhibit 'AW1/12', order of dismissal dated 27.12.2017 Exhibit 'AW1/13', complaint by the Bhartiya Kamgar Karamchahi Mahasangh raising the issue of the transfer of the workman and regarding adoption of unfair labor practice dated 30.10.2014 Exhibit 'AW1/14', Memo dated 14.05.2018 issued by Assistant Labour Commissioner-cum-Conciliation Officer, Union Territory Chandigarh advising the workman to proceed closing the conciliation proceedings and advising to proceed as per Sub Section 2A (2) of the Industrial Disputes (Amendment) Act, 2010 Exhibit 'AW1/15', judgment along with the list of the workers in which the name of the workman finds mentioned at Sr.No.89 Exhibit 'AW1/16'.

22. Now the main bone of contention between the parties, whether the services of the workman were terminated illegally or not. During the pendency of the present case, learned representative for the management has moved the application for treating the issue of inquiry as preliminary issue but *vide* order dated 20.01.2020 it was decided that this issue covers with this issue No. 3 i.e. "Whether the services of Shri Devinder Singh Rawat were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ?". The workman is vehemently argued that the *ex parte* inquiry has been conducted, no opportunity was given to him, assistance of an Advocate was not provided, inquiry is biased as his representations were rejected. But after perusal of oral and documentary evidence on record I find that the workman was charge sheeted for the act of misconduct of false reporting as contained in the charge sheet dated 17.02.2017 and after finding his reply to be unsatisfactory, an inquiry was ordered and the workman initially participated in the inquiry but later abstained from the inquiry without any justification and for the reasons best known to him. The Inquiry Officer completed the enquiry and found the workman guilty of charges and accordingly the inquiry report dated 28.10.2017 was sent to him by the management on 20.11.2017 for his representation, if any. The representation of the workman to the inquiry report along with enquiry proceedings and all other documents filed during the enquiry and inquiry report were duly considered and he was dismissed from service on 27.12.2017 on the basis of proved charges of misconduct. Further in my view, the management has given full opportunity to the workman to prove his innocence by way of conducting a fair and proper enquiry. The inquiry that commenced on 12.04.2017 continued on 03.05.2017, 01.06.2017, 03.07.2017, 20.07.2017, 03.08.2017, 17.08.2017, 13.09.2017, 29.09.2017 and 16.10.2017. Initially the workman attended the inquiry and from 13.09.2017 onwards without any valid reason or justification & despite having due notice of the dates and proceedings he stopped attending the enquiry. So, the Inquiry Officer was left with no other alternative but to proceed and conclude the inquiry in the absence of the workman. The statements of witnesses were recorded by the Inquiry Officer and documents were proved by the witnesses in the inquiry. There is no rebuttal by the workman to the evidence of management on the inquiry file as he abstained from the inquiry. The workman cannot blame the Inquiry Officer after he himself abstained from the inquiry for no justifiable reasons. Hence, the enquiry is fair and proper.

23. Further the Inquiry Officer considered the application moved by the workman regarding representation through an Advocate and the workman was allowed to be defended by any co-employee, who would have been fully aware of the working of system and rules of the company. Hence, no adverse proceedings were held by the Inquiry Officer against the workman on 03.07.2017 and the copy of statement of management witness taken on record was supplied / sent to workman along with copy of inquiry proceedings by registered post by the Inquiry Officer. The workman was adamant to bring an Advocate in the inquiry despite speaking orders passed by the Inquiry Officer on his earlier request. The second representation was disposed off accordingly by the Inquiry Officer.

24 Further the workman filed a representation to the report of Inquiry Officer which was duly considered by the disciplinary authority and thereafter the dismissal orders were passed by the Zonal Business Manager, who is competent to pass such orders on behalf of the Company. The statement of the workman that the Zonal Business Manager is neither the appointing authority nor the disciplinary authority is a false statement and flies on its face in light of the fact that he was appointed as a Territory Business Manager by Zonal Business Manager based at New Delhi. It seems he wanted to prolong the inquiry by remaining adamant. He was himself in a better position to explain the charges and defend his case rather to take assistance of Advocate in inquiry. He was also given opportunity by the Inquiry Officer to bring any of his Co-employee as his defense assistant in the inquiry as a co-employee would have been well conversant with the working of the Company's system and relevant rules and would have rendered satisfactory service to the workman, which opportunity the workman did not avail.

25. After perusal of the course and occurrence the management dismissed the workman from service. Misconduct of the false reporting and usurping the samples of the management is a grave misconduct. The management had sought information by filing RTI application to the effect that the Doctors were not in India when the workman claims meeting them. Law is well settled in **Abdul Kahar Versus Labour Court, Bhilwara (supra)**.

26. Further reliance is also made on citation **Crescent Dyes & Chemicals Limited Versus Ram Naresh Tripathi (supra)** in which Hon'ble Supreme Court of India has held that the doctrine of natural justice embodies that right to be represented is not absolute right and can be controlled, restricted or regulated if charge is grave delinquent's request for representation can be conceded. When charge is not grave the Inquiry Officer justified in refusing representation. The management has offered opportunities of full to the workman in this regard reliance is placed on citation **Punjab Agro Industries Versus Niram Singh & Another, Kurukshetra University Versus Prithvi Singh and Karnataka State Road Transport Versus Lakshmiddevamma & Another (supra)**.

27. After perusal of the inquiry file it is crystal clear that the workman was full opportunities to prove his innocence by way of conducting fair and proper inquiry and he was also given opportunities to defend his case with the help of co-worker / co-employee. All this fact have been admitted by the workman during the cross-examination before this Court as AW1 wherein he admitted that it is correct he was issued charge sheet by the management *vide* letter dated 17.02.2017 and he submitted explanation to the charge sheet on 02.03.2017 along with e-mail dated 28.11.2012. He also stated that Shri A. K. Bakshi was appointed as Inquiry Officer by the management on 30.03.2017 and was issued notice for inquiry and joined the inquiry on 12.04.2017. He further admitted that it is correct that he kept attending inquiry proceedings till 17.08.2017 and did not attend further proceedings dated 13.09.2017, 29.09.2017 and 16.10.2017. He was issued notices by the Inquiry Officer to join inquiry on 13.09.2017, 29.09.2017 and 16.10.2017 as well, as he did not join inquiry. He also admitted that it is correct that the Inquiry Officer allow representation of any of the co-employee. The inquiry was proceeded *ex parte* on 29.09.2017 and he did not approach the Inquiry Officer or sent any letter except letter dated 16.09.2017. He admitted that it is correct that he was given copy of inquiry report by the management on 20.11.2017 by email dated 21.11.2017 by registered post. He asked for ten days time to submit his reply which was granted by the management. He further admitted that it is correct that he submitted his comments on 02.12.2017 and the management passed dismissal order on 27.12.2017.

28. Though numerous citations have been relied upon by the workman but the same are not directly applicable to the facts & circumstances of the present case as it is proved on record that the workman was terminated from the services after conducting a fair & proper inquiry and after affording full & fair opportunity to the workman to defend himself. The services of the workman have been terminated legally by the management after adopting proper procedure of law. This issue is decided against the workman and in favour of the management.

Relief :

29. In the light of findings on issue No.3 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 6th January, 2022.

(Sd.). . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal &
Labour Court,
Union Territory Chandigarh.
UID No.PB0095.

Secretary Labour,
Chandigarh Administration.

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."